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SENATE BILL 2642 By
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HOUSE BILL 2607
By West

AN ACT to amend Tennessee Code Annotated, Title 47, Chapter 18, relative to consumer protection and to enact the Tennessee Computer Lemon Act of 2002.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 47, Chapter 18, is amended by adding the following as a new part to be appropriately designated:

Section 1. This act may be cited as the Tennessee Computer Lemon Act of 2002.

Section 2. In this act, unless the context otherwise requires;

(1) "Brand new computer" means a computer device, which has been recently assembled, is unused, and contains no reconditioned parts.

(2) "Computer device" means a central processing unit or terminal display screen, including all circuitry and connective devices; a printer; a modem; a scanner; or any other device used with a computer or any programming for a computer, whether preinstalled or purchased separately.

(3) "Date of sale or lease" means the date when a computer device is first delivered to a purchaser.

(4) "Manufacturer" means a person or for-profit entity engaged in the business of manufacturing or assembling computers or computer software or accessories.

(5) "Nonconformity" means a defect, condition, or malfunction that impairs the use of a computer device or causes it to operate in a manner not intended.

(6) "Notice" means the means by which a purchaser advises a manufacturer of a nonconformity. Notice may be transmitted by any of the following means:

(A) by certified or registered mail, return receipt requested;

(B) by facsimile transmission;

(C) electronically; by e-mail; or

(D) by any means provided for in the manufacturer's warranty or service materials.

(7) "Purchaser" means a person who is a resident or temporary resident of the state of Tennessee or a business entity that has fewer than thirty (30) personal computers acting either in concert with a network or as stand-alone machines and who obtains a computer device by lease, retail sale, internet sale, gift, special contract, or other transaction, whether delivered or currently located in this state.

Section 3.

(a) At the time of sale or lease of a computer device, a purchaser must be provided by the manufacturer an accurate written statement of the purchaser's rights established by this act. The statement must be printed in 14-point boldface type. The manufacturer must secure from the purchaser a signed acknowledgment that the manufacturer has explained to the purchaser his or her

rights and that the purchaser understands those rights. Unless a signed acknowledgment of rights is secured, the time limits specified in Section 4 must be tolled.

(b) The manufacturer must conspicuously disclose the name and version number of all software programs or combinations of programs that will or may be likely to cause operating problems with the computer device. In any action brought under this act, when there is a claim that such a disclosure was not made, the burden is on the manufacturer to prove that such a disclosure was made.

Section 4.

(a) A purchaser of a computer device is entitled to effective repairs by the manufacturer for any nonconformity that arises during the first twenty-four (24) months of use, at no cost to the purchaser. However, if the manufacturer has issued a warranty or service contract, the coverage period must be the greater of (i) the term specified in the warranty or service contract or (ii) twenty-four (24) months from the date of purchase.

(b) Within five (5) business days after receiving notice from a purchaser of a nonconformity, plus reasonable time for shipping of not more than three (3) business days, the manufacturer must repair any computer device and return it to the purchaser subject to the following conditions:

(1) If on-site service is provided for in the warranty, repairs must be made at the purchaser's location without charge.

(2) If on-site service is not provided for in the warranty, the manufacturer must arrange and pay for the cost of shipping from the purchaser's location.

(3) If on-site service is conducted by the purchaser, who, at the manufacturer's direction, performs diagnostic tests or troubleshooting procedures or attempts repairs, including, but not limited to, partial disassembly, the service is considered to be conducted by the manufacturer.

(4) All repairs must be guaranteed by the manufacturer for a term of two (2) years.

(c) If the repair is ineffective, the manufacturer has, upon notice from the purchaser, a second opportunity to make an effective repair at the purchaser's location, provided that the repair is completed within three (3) business days. The manufacturer may not require the purchaser to ship the unit back to the manufacturer for the final repair opportunity regardless of the manufacturer's willingness to pay for shipping costs.

(d) If the second repair is ineffective or if the manufacturer fails to timely respond to the purchaser as required under this section, the purchaser may elect to do either of the following:

(1) Receive from the manufacturer a refund of the full purchase price paid at the time of sale or the full value of the lease, as the case may be, plus finance and collateral charges; or

(2) Receive from the manufacturer delivery of a brand new computer device of equal or greater value than the original price paid at the time of acquisition, without charge or offset for use.

If more than one (1) nonconformity has been subject to repair, no second repair attempt is required before the purchaser may seek the remedies provided in this act.

(e) A manufacturer may, at its discretion, request return of the unrepaired computer device at cost, if the manufacturer has replaced the unit or refunded the purchase price.

(f) No computer device returned in accordance with this section may be resold in this state. A violation of this subsection is a prohibited practice under §47-18-104, and, for the purposes of this act, the remedies provided therein shall also be available to certain business organizations as defined in Section 2(7). In addition to remedies provided by that act, any subsequent purchaser is entitled to damages in the amount of treble the purchase price paid by that purchaser for the device.

(g) Notwithstanding subsections (e) and (f), a manufacturer who refuses to honor the terms of any warranty booklet or materials delivered to the purchaser at, prior to, or after the delivery of the computer device is in violation of §47-18-104, and in addition to remedies provided by that act, the original purchaser is entitled to damages in the amount of treble the purchase price paid by that purchaser for the device.

Section 5.

A manufacturer must retain records of all contacts, communications, notice transmissions, or customer service dialogues between it and a purchaser and must maintain a list, by serial number, of all refunds or replacements made under this act. Copies must be made available to the purchaser upon demand, regardless of whether the manufacturer uses the services of a third party to manage purchaser claims. Failure to comply with this section is a violation of § 47-18-104, and in addition to remedies provided by that act, the original purchaser is entitled to damages in the amount of treble the purchase price paid by that purchaser for the device.

Section 6.

(a) If the manufacturer of a computer device violates any provision of this act, the purchaser may initiate a civil action to recover as damages any and all remedies specified in this act.

(b) In addition to refund or replacement of the computer device under Section 4, a prevailing purchaser is entitled to an additional award of six thousand dollars (\$6,000).

(c) If a purchaser initiates an action in this state for a violation of this act, the manufacturer must produce at each and every court proceeding in that action a corporate representative who is fully aware of the facts and circumstances of the case and has available for the court's review a copy of all records required by Section 5.

Section 7.

If a purchaser prevails in a claim under this act, the manufacturer must pay the purchaser's reasonable attorney's fees, costs, and expert expenses in resolving and, if necessary, litigating an action under Section 6, regardless of the cost of the computer device.

Section 8.

It is not a defense under this act that a nonconformity was caused by a software programming problem under the following conditions:

(1) If the software was preinstalled by the manufacturer.

(2) Unless the manufacturer produces an expert witness at the proceedings who examined the computer device and can specify the exact cause and correction of the problem.

(3) Unless the manufacturer has strictly complied with the notice provisions of subsection (b) of Section 3.

Section 9.

A purchaser who seeks relief under this act must not under any circumstances be required to retain the opinion of an expert to prevail against a manufacturer.

Section 10.

A violation of any provision of this act is also a violation of §47-18-104.

Section 11.

Nothing in this act limits the purchaser from pursuing any other rights or remedies under any other law, contract, or warranty.

Section 12.

The provisions of this act may not be waived by a purchaser.

Section 13.

This act applies to all computer devices purchased, leased, or delivered to a purchaser on or after the effective date of this act.

SECTION 2. This act shall take effect on July 1, 2002, the public welfare requiring it.